

1 [The following transpired at 10:15  
2 a.m.]

3 THE COURT: Are you ready to proceed,  
4 Mr. Condon?

5 MR. CONDON: Yes, Your Honor.

6 THE COURT: Are you ready to proceed,  
7 Mr. Ahern?

8 MR. AHERN: Yes, Your Honor.

9 THE COURT: As I indicated to you last  
10 week, I am now to place my decision on the  
11 record after the hearing. Of course, this  
12 Court conducted both a Dunaway hearing and a  
13 Huntley hearing on the application of the  
14 defendant and with the consent of the  
15 People.

16 The following constitutes a decision of  
17 the Court: This Court has been handed a  
18 very troublesome and disturbing scenario in  
19 deciding whether there was sufficient proba-  
20 ble to arrest this defendant on December  
21 10th, 1990 for the following reasons:

22 1) The defendant, if convicted of  
23 these crimes, would in all likelihood be a  
24 persistent felony offender facing life in  
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1 prison.

2 2) The defendant probably committed at  
3 least one of these burglaries, if not all of  
4 them.

5 3) There are many inconsistencies in  
6 the defendant's story. And the Court does  
7 not fully credit his testimony.

8 But, 4), more troubling and dispositive  
9 of the issues in this case, the arresting  
10 officers, Hickey and Crowley, are even less  
11 credible than the defendant, and they en-  
12 gaged in a pattern of conduct which offends  
13 the sensibility of this court, and was vio-  
14 lative of his constitutional rights.

15 The following constitutes the Court's  
16 finding of fact:

17 On December 10th, 1990, sometime in the  
18 morning of that day, Police Officers Hickey  
19 and Crowley were on routine patrol in the  
20 Wyandanch area in sector car 102. They were  
21 traveling westbound on Long Island Avenue in  
22 the vicinity of Grand Boulevard and Straight  
23 Path, not far from two houses which they  
24 allege are known for illegal activities;  
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1 that is, the marketing of illegal drugs,  
2 alcoholic beverages and the fencing of sto-  
3 len property.

4 They claim that they observed a black  
5 male, the defendant, walking in broad day-  
6 light in front of their marked police vehi-  
7 cle carrying a white pillowcase with a piece  
8 of stereo equipment protruding from the bag.  
9 Although the pillowcase which was received  
10 in evidence is substantially larger than the  
11 stereo cassette pack which was likewise  
12 received in evidence.

13 According to them, the defendant fit  
14 the description of a black male who had been  
15 chased by the victim of a burglary on Decem-  
16 ber 2nd, 1990 at 1683 Straight Path,  
17 Wyandanch. That subject was described as a  
18 black male, twenty-six to thirty years of  
19 age, five foot ten inches tall, one hundred  
20 and fifty-five to one hundred sixty pounds,  
21 light skinned, close cropped Afro, some  
22 complexion, scars on his lower right lip and  
23 left eyebrow, and wearing a green vinyl  
24 aviator jacket.  
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It is significant that on the date of  
the arrest the defendant had a fully formed  
goatee and mustache which was not mentioned  
by the complainant of the burglary which had  
taken place eight days before. And although  
the officers claimed that they could see one  
on that day, the defendant does not have a  
scar on his lower right lip. Although he  
does have a scar in his eyebrow which is  
barely discernable except through close  
examination.

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Furthermore, although Police Officer  
Crowley testified that the prior description  
included missing or protruding teeth which  
fit the physical characteristics of the  
defendant, there was no such description  
provided by the homeowner. In fact, those  
characteristics, like the mustache and goa-  
tee, are the most prominent facial charac-  
teristics of the defendant. Other than the  
fact that he is black and -- the section of  
Wyandanch, that section of Wyandanch is a  
predominantly black community. Neverthe-  
less, the officers made a decision to stop

1 the defendant and to question him.

2 He was first asked where he was going.  
3 The response which this court is asked to  
4 believe was virtually incriminating. Quote:  
5 Toward the bootlegger on Elm Street, un-  
6 quote, or words to that effect. He was then  
7 asked his name. And he hesitated or stam-  
8 mered before giving his correct name.

9 When he was asked where he lived, he  
10 could not give them a house number, but gave  
11 them a house on North 15th Street which they  
12 were familiar with. That is the Tatum resi-  
13 dence.

14 He was then asked what was in the bag.  
15 And he told them that it was a V.C.R. And  
16 agreed to show them the contents of the  
17 pillowcase. Although both officers say they  
18 could parts of the stereo equipment which  
19 was protruding from the bag.

20 When asked whether it was his, they  
21 said the defendant said it was. And he said  
22 a friend had given it to him. At that point  
23 they said he was told he was going to be  
24 detained. The defendant, they say, was very  
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1 cooperative. To the extent right then and  
2 there he admitted he had gotten it on the  
3 previous day during the course of a bur-  
4 glary. At that point this very cooperative  
5 suspect elected to run from the officers.  
6 And he was tackled in the street about fif-  
7 teen feet away.

8 The Officers observed a slight scratch  
9 on his nose. And he was placed under arrest  
10 and moved into the rear of the police vehi-  
11 cle. This entire encounter lasted less than  
12 ten minutes.

13 Despite the fact that the defendant was  
14 for all intents and purposes under arrest at  
15 that time, the police officers, without  
16 notifying the precinct, elected to take the  
17 defendant on a grand tour of the Deer Park  
18 and Wyandanch communities to three different  
19 homes which the defendant allegedly told  
20 them he had burglarized. They say the  
21 defendant directed them to at least two of  
22 these locations. And at the Tatum house  
23 they recovered a leaf blower which the de-  
24 fendant had placed under a Christmas tree.  
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A leaf blower had been taken from one of these homes. But the leaf blower which they recovered does not match the description of the leaf blower which was taken from the home which had been burglarized.

At two of the locations one of the officers exited the vehicle to talk to civilian witnesses while the defendant remained handcuffed in the police vehicle. At the Tatum residence the defendant was identified by Mrs. Tatum. Although the Tatum residence was not one of the homes that was allegedly burglarized.

At 11:32 a.m. the officers responded to the First Precinct with the defendant under arrest, at least forty-seven minutes after they first encountered the defendant in the street. He was then turned over to the First Squad Detectives to be questioned in connection with various burglaries.

During the course of the questioning, which lasted until 4:30 p.m., the defendant gave four separate signed written confessions, and what's been characterized as

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resisting arrest photographs were taken of his face, mouth, teeth, hands and wrists, which all showed signs of recent trauma.

The defendant's version of what happened on the morning of December 10th, 1990 is greatly at variance with the version of the uniformed officers. He said he encountered the police officers in broad daylight at Woodland and Grand Boulevard in Wyandanch, when they came up behind him in a police car. He was going to his friend's house he says. He was stopped and he was asked what he had in the pillowcase. He responded that it was amplifier which was his. And that he was going to Bobby Tatum's house. Police Officer Hickey then accused him of a burglary on North 15th Street, a house which Hickey said was owned by a black ex-cop. He told him that he had seen him outside that house. But that he had not arrested him. They referred to themselves as Ratman and Fatman. And said quote: Today's your lucky day. We're going to whip your ass, unquote.



1 He was then grabbed. And the stereo  
2 equipment was placed on the trunk of the  
3 car. The defendant was handcuffed and  
4 placed in back of the car. He was told that  
5 he was lying when he told them that they had  
6 the wrong person. Hickey was angry and  
7 threatened to beat the defendant. He was  
8 driven to a truck parking lot where the  
9 officers engaged some men in conversation  
10 who could not identify the defendant. Hickey  
11 was now really upset according to the  
12 defendant.

13 He was then driven to the municipal  
14 parking lot in Wyandanch at the Long Island  
15 Railroad Station, where the police vehicle  
16 was parked between two parked vehicles at  
17 the back of the lot. He was given one more  
18 chance to tell the truth before he was  
19 punched in the face by Officer Hickey, says  
20 the defendant, who continued to hit him in  
21 the face, stomach and ribs. He was hit on  
22 the right side of his mouth with an instru-  
23 ment which he described as a blackjack. And  
24 his teeth became quote, real loose, unquote.  
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1 Hickey then took out a needle nose pliers  
2 from the glove compartment and said that he  
3 was going to remove the defendant's teeth.  
4 Instead, according to the defendant, he  
5 puncture his knuckle with the pliers after  
6 pulling up tight on the handcuffs.  
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8 The photographs of the defendant clear-  
9 ly show an injury to his upper lip and gums,  
10 around his two upper incisors, which fell  
11 out of his mouth about two days later.

12 The photos also reveal an apparent  
13 puncture wound above his knuckle and swell-  
14 ing of both hands which was more likely the  
15 result of excessive pressure to his wrists  
16 from handcuffs.

17 Less than two weeks later there was a  
18 complete loss of feeling in the left radial  
19 nerve which is consistent with handcuff  
20 neuropathy. Such a swelling in the hands  
21 and change in color would be the result of  
22 more than thirty or forty minutes of signif-  
23 icant compression to the wrists. It is no  
24 coincidence that the defendant was in their  
25 custody, that is the custody of Hickey and

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1 Crowley, for at least forty-seven minutes  
2 that morning.

3 His version of what happened thereafter  
4 is somewhat consistent with the police ver-  
5 sion. Although he contends that a male  
6 civilian at a residence in Deer Park was  
7 invited into the police vehicle to engage  
8 the defendant in conversation about a bur-  
9 glary at his house.

10 On the trip to the precinct they  
11 threatened to beat him again if he com-  
12 plained about what had happened, or if they  
13 had to take him to the hospital. Although  
14 police records in the form of the police  
15 activity log indicated that the defendant  
16 made no complaints about his physical condi-  
17 tion, he claims that he told Detective  
18 Schreiber what they had done to him. The  
19 response to which was a revisit by Officer  
20 Hickey in the interview room who threatened  
21 to beat him once again,.

22 Although resisting arrest photographs  
23 were taken by the investigating detectives,  
24 and the defendant clearly sustained visible  
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1 fresh injuries to his hands which were cut,  
2 and to his mouth, Detective-Sergeant Burke,  
3 who was supervising the investigating detec-  
4 tives, made no note or report of the fact  
5 that the defendant reported in response to  
6 his questioning that he had recently had a  
7 scuffle with someone else. In fact, the  
8 entire investigation is devoid of contempo-  
9 raneous notes or memoranda save the  
10 conclusory police reports which were made  
11 after the fact.

12 The following constitutes the court's  
13 conclusions of law:

14 Although the People correctly point out  
15 that it is the defendant who bears the ulti-  
16 mate burden of proving that the evidence  
17 should not be used against him, it is the  
18 People who in the first instance must show  
19 that the police conduct was reasonable; that  
20 is, the People have the evidentiary burden  
21 of going forward in the first instance to  
22 demonstrate the legality of the police con-  
23 duct. In that regard, therefor, the testi-  
24 mony of the first two officers who encoun-  
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1 tered the defendant must be credible and  
2 must not have the appearance of having been  
3 patently tailored to overcome constitutional  
4 objectives. For that I cite People against  
5 Smith, 77 App Div 2d 544, citing several  
6 Court of Appeals cases such as Malinsky,  
7 Whitehurst and Berrios.

8 The testimony of Officers Hickey and  
9 Crowley is simply not credible in this case.  
10 Their version of the events of December  
11 10th, 1990 does not comport with the physi-  
12 cal evidence which is before this Court.  
13 While the testimony of the defendant is  
14 likewise not given full credence by the  
15 Court, his lack of credibility is not fatal  
16 to his application.

17 It is the troublesome incredible police  
18 testimony which strikes a fatal blow to the  
19 heart of the People's case. While the po-  
20 lice should be accorded great latitude in  
21 dealing with those situations with which  
22 they are confronted, it should not be at the  
23 expense of our most cherished and fundamen-  
24 tal rights, which rights are afforded no  
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1 less to prior felons and criminals than to  
2 our most law-abiding citizens. Whenever a  
3 street encounter amounts to a seizure, it  
4 must pass constitutional muster. And there  
5 I'm paraphrasing Judge Wachtler in *People*  
6 against Cantor, 36 NY 2d 106. Before a  
7 person may be stopped in a public place, a  
8 police officer must have reasonable suspi-  
9 cion that such person is committing, has  
10 committed or is about to commit a crime.  
11 Reasonable suspicion is the amount of knowl-  
12 edge sufficient to induce an ordinary pru-  
13 dent and cautious person under the circum-  
14 stances to believe criminal activity is at  
15 hand. The officer must be able to articu-  
16 late specific facts which, along with other  
17 logical deductions, justifies such intrusive  
18 conduct.

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20 As much as this Court wants to give  
21 credence to police testimony, especially  
22 where the police activity involved may have  
23 hit pay dirt in the form of the arrest of a  
24 person who may have been responsible for at  
25 least one house burglary, the facts of this

1 case cry out for a dismissal of the indict-  
2 ment for lack of probable cause. The testi-  
3 mony of the two arresting officers does not  
4 pass the test of logic and common sense.  
5 Moreover, this court is extremely troubled  
6 by the past record of these two uniformed  
7 officers who have worked together as a team  
8 for some time in the First Precinct. So  
9 much so that they have been doved street  
10 names presumably descriptive of their police  
11 activities, Ratman and Fatman.

12 This court simply cannot accept the  
13 police version of what happened in broad  
14 daylight in the streets of Wyandanch on  
15 December 10th, 1990. While the officers  
16 have attempted to choreograph their activity  
17 to meet constitutional requirements, the  
18 simple fact remains that the person they  
19 stopped on that morning, because of their  
20 aroused suspicions, was merely a nonspecific  
21 black male carrying a white cloth sack over  
22 his shoulder about five foot ten inches in  
23 height, thin build, in his late twenties or  
24 early thirties. The most noticeable physi-  
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cal characteristics of the defendant, other than the fact he was black, a fully formed mustache and goatee, did not even enter into the equation. God only knows how many black males fit that description in Wyandanch on the morning of December 10th, 1990.

Furthermore, in a period of less than three years there were no less than eighteen civilian complaints lodged against one or both of these police officers, some of which claim the very conduct which has been alleged by this defendant in these proceedings.

[32] While the Officers either deny these allegations or any knowledge of them, this Court cannot help but consider them in assessing the credibility of these two officers. Especially where the defendant is a black man who claims to have been beaten by them with physical evidence to support such conduct, such as lost teeth, swollen hands, open wounds and loss of sensation resulting from nerve damage in the wrist area, and the civilian complaints in the eighteen other



1 complaints with likewise virtually always  
2 black persons who are allegedly referred to  
3 as niggers or black son of a bitch. And  
4 where there were complaints, as in this  
5 case, of beatings to the face and head,  
6 threats of physical force and violence, and  
7 excessive force in the use of handcuffs.  
8 And on two occasions, as in this case, the  
9 complainant was allegedly injured when he  
10 was fleeing with the officers in pursuit.

11 There is a temptation, after reviewing  
12 the stipulation entered into the record, to  
13 jump to the conclusion that these two offi-  
14 cers have a propensity to terrorize and  
15 assault black suspects. The law prohibits  
16 me from reaching such a conclusion. But, at  
17 the very least, the pattern and number of  
18 complaints during a relatively short period  
19 of time, despite the fact that internal  
20 police investigations call them unfounded,  
21 reflects poorly upon their credibility as  
22 witnesses in this court. A trial court,  
23 unlike an appeals court, does not deal in  
24 abstract justice. It does not reach its  
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1 conclusions from a sterile printed record.  
2 I have had the opportunity to observe and to  
3 listen to each of these witnesses under  
4 oath. I have also had the opportunity to  
5 question the witnesses myself and to absorb  
6 their individual responses to counsel's  
7 questions and the questions of this court.

8 What I heard in response thereto was  
9 propoundly disturbing. And those feelings  
10 extend no less to the testimony of the de-  
11 tectives and their supervisor than to the  
12 two uniform officers. There was a striking  
13 lack of humanity displayed by the manner  
14 which this injured person, despite his sta-  
15 tus as a suspect, was treated. To para-  
16 phrase the defendant, he is a human being.  
17 He is not a dog. And he should have been  
18 treated as such.

19 In the light of his medical record and  
20 dental history, this court cannot conceive  
21 of this particular defendant refusing medi-  
22 cal treatment or transportation to a hospi-  
23 tal. Nor does this court believe for one  
24 minute that the defendant told Detective-  
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1 Sergeant Burka that his injuries were caused  
2 by a scuffle with some unknown person.  
3 These police were doing everything in their  
4 power to document the defendant's attempt to  
5 flee the arresting officers with injuries  
6 resulting from their physical -- from their  
7 physically effectuating an arrest in the  
8 middle of the street. Yet the detective-  
9 sergeant did not write one note or report  
10 the defendant's explanation of his injuries.  
11 Common sense dictates otherwise. If this  
12 defendant had blamed his injuries upon some  
13 nonspecific scuffle, there is no question  
14 but that such explanation would have been  
15 pursued and fully documented by the investi-  
16 gating team. To have done less would have  
17 been police malpractice. It just doesn't  
18 happen that way.

19 Furthermore, this court cannot accept  
20 the story that these two uniform officers,  
21 operating as a team in a sector car in what  
22 the People have described as a high crime  
23 area, would leave their sector no less --  
24 for no less than thirty-seven minutes, but  
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probably longer than that, without advising the precinct that they had vacated their area of responsibility with a suspect in custody to travel to various locations in Deer Park and Wyandanch. And that is simply not credible. This court is convinced that the First Precinct and the adjacent sector cars, as well as the road sergeant, had to know that the officers had vacated their sector. Unfortunately, although counsel called for the preservation of tapes of all radio and/or telephonic transmissions in regard to this case from that morning, the police on their own chose only to preserve tapes documenting the period from 11:24 a.m. forward, the time that the officers went code thirty-two. That is, returning to precinct.

This court will never know what was being transmitted by those officers or by their command from the time that they first confronted the defendant and placed him under arrest. A Suffolk County Police Officer simply does not place a suspect under

1 arrest and transport him to other locations  
2 without keeping his command abreast of the  
3 situation. The real world does not work  
4 that way.

5 Moreover, this court cannot help but  
6 notice and underscore that Police Officer  
7 Crowley's memo book entries for that day are  
8 devoid of any information except for what  
9 occurred as of 11:24 a.m., some thirty-five  
10 minutes after he claims they placed the  
11 defendant under arrest.

12 The bottom line is that this court has  
13 no confidence in the case presented by the  
14 prosecution as measured by the testimony of  
15 the arresting officers, the investigating  
16 detective, and the physical and documentary  
17 evidence. While this court recognizes and  
18 considered the various inconsistencies in  
19 the defendant's story, those pale by compar-  
20 ison to the tale which this court has been  
21 asked to accept by the People. While the  
22 arresting officers may have scored on their  
23 hunch in this case, the ends do not justify  
24 the means. And there was insufficient prob-  
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For all of the foregoing reasons, the indictment is hereby dismissed. And bail is exonerated.

[The Court recessed to Chambers at  
10:35 a.m.]

REPORTER'S CERTIFICATION

Continued / 1st page